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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MARIA BOUGAI,

9 Plaintiffs,

10 v.

11 MICHAEL MUKASEY, Attorney General
12 of the United States, *et al.*,

13 Defendants.

No. C08-0624RSL

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES

14 **I. INTRODUCTION**

15 This matter comes before the Court on plaintiff Maria Bougai's "Motion for
16 Attorneys' Fees" under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. # 13.
17 For the reasons set forth below, the Court grants in part plaintiff's motion.

18 **II. DISCUSSION**

19 **A. Background and Procedural History**

20 Plaintiff filed an N400 application for naturalization with the United States
21 Citizenship and Immigration Services ("CIS") on May 11, 2005. CIS failed to adjudicate her
22 application in a timely fashion, prompting plaintiff to seek judicial naturalization pursuant to 8
23 U.S.C. § 1447(b). On May 5, 2008, the Court ordered defendants to show cause why plaintiff
24 should not be naturalized. Defendants were specifically instructed to state any reasons why
25 plaintiff was not eligible for naturalization and to provide a proposed plan, if appropriate, for the
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1 prompt administrative adjudication of her application. Defendants' only response was a motion
2 to remand this matter with a promise to adjudicate plaintiff's application within sixty days.
3 Plaintiff opposed defendant's request for a remand, but argued in the alternative that, if a remand
4 were ordered, CIS should be required to immediately approve her application for naturalization.
5 After noting that defendants failed to raise any genuine issue of material fact regarding
6 plaintiff's eligibility for naturalization and failed to justify its request for sixty additional days in
7 which to consider her application, the Court granted plaintiff's application and ordered CIS to
8 schedule an oath ceremony and naturalize plaintiff as soon as possible. Dkt. # 10. Plaintiff
9 now seeks reimbursement of fees and costs under the EAJA.

10 **B. Analysis**

11 Under the EAJA, a litigant who has brought a civil suit against the United States is
12 entitled to attorney's fees and costs if: (1) she is the prevailing party in the matter; (2) the
13 government fails to show that its position was substantially justified or that special
14 circumstances make an award unjust; and (3) the requested fees and costs are reasonable. See
15 28 U.S.C. § 2412(d)(1)(A). Defendants have not challenged plaintiff's status as a "prevailing
16 party" or the reasonableness of the fees and costs requested.

17 **1. Substantially justified**

18 Fees will not be awarded under the EAJA if the government shows that its
19 litigating position was substantially justified or that special circumstances make the award
20 unjust. 28 U.S.C. § 2412(d). "The EAJA defines the 'position of the United States' as not only
21 its litigation position in the civil action, but also the government's action upon which the civil
22 suit is based." United States v. Real Prop. at 2659 Roundhill Drive, 283 F.3d 1146, 1151 (9th
23 Cir. 2002) (citing 28 U.S.C. § 2412(d)(2)(D)). The government bears the burden of showing that
24 its position was substantially justified. Id. at 1151 n.7.

25 Defendants' litigation stance was unsatisfactory. Although their legal argument
26 regarding remand was supportable, defendants failed to respond to the Court's order to show

1 cause, never addressed plaintiff's evidence of eligibility for naturalization, and demanded,
2 without explanation, that CIS be given sixty days following remand to complete the
3 adjudication. Defendants' pre-litigation conduct – namely their failure to act on plaintiff's
4 application for almost three years – was even worse. Agencies are required to conclude matters
5 presented to them within a "reasonable time" (5 U.S.C. § 555(b)) and the applicable regulations
6 state that "[a] decision to grant or deny the application shall be made at the time of the initial
7 examination or within 120-days after the date of the initial examination of the applicant for
8 naturalization[.]" 8 C.F.R. 335.3(a). In the circumstances presented here, three years was not a
9 reasonable amount of time in which to adjudicate plaintiff's application. Defendants have not
10 offered any evidence that plaintiff was ineligible for naturalization, instead arguing that they had
11 a duty to investigate before adjudicating her application. They have not, however, explained
12 what they were doing between 2005 and 2008 to discharge this duty or why the investigation
13 took so long. The agency action, or inaction, that necessitated this litigation was not reasonable.

14 Treating the "case as an inclusive whole, rather than as atomized line items," (Al-
15 Harbi v. INS, 284 F.3d 1080, 1084-85 (9th Cir. 2002)), the Court finds that defendants' position
16 toward plaintiff was not substantially justified. "Congress enacted the EAJA to ensure that
17 individuals and organizations would not be deterred by the expense of unjustified governmental
18 opposition from vindicating their fundamental rights in civil actions and in administrative
19 proceedings." Abela v. Gustafson, 888 F.2d 1258, 1262 (9th Cir. 1989). Having been forced to
20 file suit in order to have her naturalization application adjudicated, an award of fees and costs is
21 justified under the EAJA.

22 **2. Reasonable fees and costs**


23 Plaintiff is entitled to a "reasonable" amount of fees. 28 U.S.C. § 2412(b). The
24 EAJA provides that "attorney fees shall not be awarded in excess of \$125 per hour unless the
25 court determines that an increase in the cost of living or a special factor, such as the limited
26 availability of qualified attorneys for the proceedings involved, justifies a higher fee." Id. at

1 § 2412(d)(2)(A)(ii). Although counsel for plaintiff charged more than the statutory rate,
2 defendants have not challenged the reasonableness of the fees and costs requested. Because
3 plaintiff needed specialized immigration law skills to pursue this action and obtain summary
4 judgment, she is justified in seeking compensation at a higher, market rate

5 **III. CONCLUSION**

6 For all of the foregoing reasons, the Court GRANTS plaintiff's "Motion for Attorneys'
7 Fees" (Dkt. # 13) in the amount of \$19,897.¹

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10 Dated this 17th day of December, 2008.

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12 Robert S. Lasnik
13 United States District Judge
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25 ¹ Plaintiff's request for additional fees associated with her reply is denied. No reply was
26 necessary where plaintiff had accurately anticipated defendants' argument in her motion.